

3 FAM 4150 COMPLIANCE WITH THE FINANCIAL DISCLOSURE REQUIREMENTS OF THE ETHICS IN GOVERNMENT ACT OF 1978

3 FAM 4151 GENERAL

3 FAM 4151.1 Purpose

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

These regulations:

- Provide criteria and procedures for the submission, audit, and evaluation of public and confidential financial disclosure reports; and
- Specify the procedures for making public financial disclosure reports available to the public.

Public and confidential reports are required of Presidential appointees and certain employees of the Department.

3 FAM 4151.2 Authority

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

- The Ethics in Government Act of 1978 (Public Law 95-521), as amended by the Ethics Reform Act of 1989 (Public Law 101-194 and subsequent amendments).
- Implementing regulations issued by the Office of Government Ethics at 5 CFR 2634.
- 22 CFR Section 10.735.

3 FAM 4151.3 Definitions

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. "Act" means the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, and subsequent technical amendments.

b. "Confidential filer" means:

(1) Any employee in the Department graded at GS-15 or below (or Foreign Service equivalent), whose position requires him or her to participate personally and substantially, through decision or the exercise of significant judgment, in taking Government action regarding:

(a) Contracting or procurement;

(b) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(c) Regulating or auditing any non-Federal entity; or

(d) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity;

(2) Employees may also be required to file a confidential report if their duties or responsibilities are such that a report is necessary to evaluate real or apparent conflicts of interest. This could include, for example, those employees whose duties involve investigating or prosecuting violations of criminal or civil law;

(3) All Special Government Employees as defined in section 3 FAM 4151.3 e, including those who serve on advisory committees or who serve as members of international conference delegations.

c. "Designated agency ethics official (DAEO)" means the official designated to administer the provisions of the Act within the Department (see section 3 FAM 4153).

d. "Public filer" means an employee of the Department, including a Special Government Employee, whose pay grade is classified at GS-16 or above (e.g., SL, SES, SFS) or who is assigned to a position with a basic rate of pay equal to or greater than the minimum rate of basic pay fixed for GS-16, or a non-senior employee of the Foreign Service who is serving in a position normally designated for a member of the Senior Foreign Service (commonly known as a senior stretch assignment). It also includes employees appointed to positions by the President by and with the advice and consent of the Senate, for example, assistant secretaries and ambassadors; employees in the excepted service (both Civil Service and Foreign

Service) in positions which are of a confidential or policy-making character (e.g., Schedule C), unless the positions have been excluded by the Director of the Office of Government Ethics; and certain other individuals described from time to time in issuances of the Office of Government Ethics.

e. "Special Government Employee" means an officer or employee, whether or not compensated, who is retained, designated, appointed or employed to perform temporary duties, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis, but does not include an advisory committee member who serves only as a representative of an industry or other outside entity or who is already a Federal employee, or any private sector member of a State Department-sponsored committee which does not advise on, or perform, government functions.

3 FAM 4152 FINANCIAL DISCLOSURE REPORT FORMS

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

- SF-278 (revised 6/94), the "Executive Branch Public Financial Disclosure Report" is currently used by public filers to meet the filing requirements of 5 CFR 2634, Subpart B.
- SF-450, "Executive Branch Personnel Confidential Financial Disclosure Report" is currently used by confidential filers to meet "confidential" filing requirements of 5 CFR 2634, Subpart I.

3 FAM 4153 DESIGNATED AGENCY ETHICS OFFICIAL

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The Deputy Legal Adviser responsible for management serves as the Designated Agency Ethics Official (DAEO) in the Department and is charged with administering the provisions of the Act. The Assistant Legal Adviser responsible for ethics matters will be designated as the Alternate Designated Agency Ethics Official. Such other officers in the Office of the Legal Adviser as are officially designated by the DAEO will serve as Deputy Designated Agency Ethics Officials.

3 FAM 4154 FILING REQUIREMENTS AND DEADLINES

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Filing requirements and deadlines for public filers and confidential filers differ considerably. The following sets forth the requirements for each type of filer.

3 FAM 4154.1 Employees and Candidates for Employment Who Are Assuming Covered Positions

3 FAM 4154.1-1 Public Filers

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

A public filer must prepare an SF-278, public financial disclosure report, containing the information prescribed in 5 CFR 2634, Subpart C as follows:

An individual who assumes, for more than 60 days in a calendar year (including in an "acting" capacity), a grade or position covered by 5 CFR 2634.202, must file a New Entrant SF-278 within 30 days of the effective date of entry into the covered position unless the individual:

- Has, within 30 days prior to assuming such position, transferred from another SF-278 covered position; or
- Is a candidate for employment in an SF-278 covered position, in which case the individual must file a New Entrant SF-278 at least 20 working days prior to entry on duty (see section 3 FAM 4157.1).

3 FAM 4154.1-2 Confidential Filers

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. An employee defined under section 3 FAM 4151.3 b who assumes, for more than 60 days in a calendar year, a position covered by 5 CFR 2634.904 must file a New Entrant SF-450 within 30 days of the effective date of entry into the position unless the individual is already covered by annual SF-450 filing requirements in his or her previous position.

b. An individual who is a candidate for employment in an SF-450 covered position must file a New Entrant SF-450 at least 20 working days prior to entry on duty in the Department (see section 3 FAM 4157.1 , Pre-Employment Clearance).

3 FAM 4154.2 Presidential Nominees

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

An individual who is nominated for a position requiring the advice and consent of the Senate must file a completed "nominee" SF-278 within five days after the President forwards the nomination to the Senate (see section 3 FAM 4157.2 a).

3 FAM 4154.3 Incumbent Filers

3 FAM 4154.3-1 Public Filers

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

An annual SF-278 is due by May 15 of each year from any employee who has served in a covered grade or position for more than 60 days in the preceding calendar year (see also sections 3 FAM 4154.5 , Filing Extensions, and 3 FAM 4155 , Late Filing Fee).

3 FAM 4154.3-2 Confidential Filers

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

An annual SF-450 is due by October 31 of each year from any employee who has served in a covered position for more than 60 days in the preceding 12-month period. While the Act does not provide for late filing fees in connection with the late filing of confidential reports, the Department will pursue appropriate disciplinary action under 3 FAM 4300 for any confidential filer who fails to submit a report, absent an extension.

3 FAM 4154.4 Employee Terminating or Transferring from a Covered Position

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Unless assuming another SF-278 covered position within 30 days, a public filer must file a "Termination" report within 30 days of departure from Federal service or from service in a covered position or grade, absent an extension (see section 3 FAM 4155 , Penalties). (There is no termination filing requirement for SF-450 covered employees.)

3 FAM 4154.5 Filing Extensions

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. For good cause shown, L/EP/FD may grant filing extensions of up to 45 days for public filers and up to 90 days for confidential filers (see exceptions in paragraph c below). Filers must request extensions prior to the filing deadline.

b. The Office of Government Ethics may grant additional filing extensions to public filers, as appropriate for good cause.

c. No filing extensions are authorized for candidates seeking employment, appointment to an advisory committee, to an international conference delegation, or for Special Government Employees seeking renewal of their appointments.

3 FAM 4154.6 Exclusions

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Certain public filers may be excluded from filing an SF-278 if classified at GS-15 (or equivalent) or below and have no policy-making role with respect to Department programs (e.g., a Schedule C secretary). The Department will advise the Office of Government Ethics each year before May 15 of all positions excluded.

3 FAM 4155 PENALTY FOR FALSIFYING REPORTS, FAILURE TO FILE OR REPORT INFORMATION, LATE FILING FEE

3 FAM 4155.1 Civil and Criminal Penalties

3 FAM 4155.1-1 Referral to the Attorney General

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The Office of the Inspector General shall refer to the Attorney General any case where there is reasonable cause to believe that an individual has willfully failed to file a public disclosure report or information required on such a report, or has willfully falsified any information (public or confidential) required to be reported.

3 FAM 4155.1-2 Civil Action and Penalties

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Any individual who knowingly and willfully falsifies or fails to file or report any information required on a public financial disclosure report may be subject to civil action brought by the Attorney General. In such cases, the court may assess a civil penalty of up to \$10,000.

3 FAM 4155.1-3 Criminal Action

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

An individual may be prosecuted under criminal statutes for supplying false information on a public or confidential financial disclosure report.

3 FAM 4155.1-4 Administrative Remedies

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Appropriate disciplinary action, provided for under 3 FAM 4300 , may be taken against any public or confidential filer who:

- Fails to file a report;
- Files a report late;
- Falsifies a report; or
- Fails to report required information.

3 FAM 4155.2 Late Filing Fee

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. A \$200 late filing fee (check payable to the U.S. Treasury) will become due from any public filer who files an SF-278 more than 30 days after an established deadline or more than 30 days after the last day of any filing extension. The fee shall be remitted along with the completed report and must be forwarded to FMP for transmittal to the U.S. Treasury for deposit in "Miscellaneous Receipts" in accordance with 31 U.S.C. 3302.

b. Only the Director of the Office of Government Ethics (OGE) may waive the late filing fee. To obtain a waiver, a public filer must provide a written explanation to OGE, through the DAEO. The DAEO will consider the merits of the waiver request and forward his opinion to OGE.

c. Agency debt collection procedures will be invoked against any filer who, after appropriate notification, has failed to submit the late filing fee. Debt collection procedures may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

d. Other sanctions may be levied against a public filer for failure to submit an SF-278 (see section 3 FAM 4155.1 , Penalties).

e. While the late filing fee does not apply to confidential filers, other penalties may be levied for failure to submit a report (see section 3 FAM 4155.1 , Penalties).

f. The date of filing for purposes of determining actual receipt of a public or confidential report will be the date a report is received in L/EP/FD.

3 FAM 4156 CONTENTS OF COMPLETED REPORTS

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Each public or confidential filer must carefully read the instructions for completing the SF-278 or SF-450, which are attached to the forms, to gain an understanding of the information which must be disclosed. Any unanswered questions may be referred to the Financial Disclosure Division (L/EP/FD).

b. Reports must comply with the provisions of 5 CFR 2634, Subpart C.

c. A copy of the filer's work requirements or position description must be attached to the completed public or confidential report.

3 FAM 4157 PROCEDURES AND BUREAU RESPONSIBILITIES

3 FAM 4157.1 Pre-Employment Clearance

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The Office of Civil Service Personnel Management and the Office of Recruitment, Examination and Employment will ensure that candidates for covered positions obtain a conflict of interest determination/clearance from L/EP/FD prior to entry on duty (see sections 3 FAM 4154.1-1 b and 3 FAM 4154.1-2 b).

3 FAM 4157.2 PER Responsibilities — Notification To L

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. The Presidential Appointments Staff (PER/CDA/PAS) is responsible for providing SF-278s to those individuals nominated by the President to covered positions which require the advice and consent of the Senate. PER/CDA/PAS is responsible for sending the completed "nominee" SF-278 to the Assistant Legal Adviser responsible for ethics matters.

b. The Office of Performance Evaluation (PER/PE) is responsible for promptly notifying L/EP/FD in writing of the names of Foreign Service employees promoted to an SF-278 covered grade, with the effective dates of such promotions.

c. The Office of Civil Service Personnel Management (PER/CSP) and the Office of Career Development and Assignments (PER/CDA) are responsible, for employees under their assignment processes, for promptly notifying the Financial Disclosure Division (L/EP/FD) in writing of the names of those employees promoted into or otherwise entering a covered category, including the effective dates of such promotion or entry.

d. The Retirement Division (PER/RCT/RET) will provide monthly lists of retirees covered by the public financial disclosure requirement to L/EP/FD so that termination filers can be promptly identified and notified to file SF-278s.

3 FAM 4157.3 Senior Review of Public Reports

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The bureau head or chief of mission will designate a senior official, with knowledge of the work performed within the bureau or post, to undertake an initial review of reports submitted by public filers to assist in the determination of potential conflicts of interest. Such a review creates no legal liability for senior reviewing officials. If a filer expresses privacy concerns, he or she may provide the senior reviewing official with a complete list of his or her holdings, absent values. To confirm that senior review has taken place, a senior reviewing official signs the public report under "Other Review" or signs the alternatively prepared list of holdings for the filer to attach to the report.

3 FAM 4157.4 Termination Certification Statement

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Bureau executive directors and post administrative officers (or their designees) are responsible for ensuring by any appropriate means at their disposal that each covered public filer, prior to departure from a covered position, executes a Termination Certification Statement (see 3 FAM 4157 Exhibit 4157.4) and is provided an SF-278 form. Statements are to be forwarded to L/EP/FD within 15 days of completion. Certification Statements are due from covered public filers terminating federal service as well as those ceasing service in an "acting" capacity or leaving a "stretch assign-

ment”, without direct transfer to another SF-278 covered position. (See section 3 FAM 4154.4 on Termination Reporting.)

3 FAM 4157.5 Distribution of Forms

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

While public and confidential filers are responsible under the law for filing financial disclosure reports by the appropriate deadline, administrative officers and executive directors are responsible for ensuring by any appropriate means that an SF-278 or SF-450 is provided to each public filer or confidential filer within their area of jurisdiction.

3 FAM 4157.6 Retention of Records

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

L/EP/FD is responsible for maintaining secure custody of financial disclosure reports (with periodic retirement of reports) for a period of six years after receipt. After six years, reports shall be destroyed unless required for an ongoing investigation. Nominee reports for individuals who fail to obtain confirmation will be destroyed one year after receipt unless required in an ongoing investigation.

3 FAM 4157.7 Release of Reports

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Any person wishing to obtain a report submitted by a public filer shall apply in writing to the Office of Freedom of Information, Privacy, and Classification (A/IM/IS/FPC), which is responsible for setting and implementing procedures for release of such reports. Reports of public filers shall be made available under this procedure within 30 days of receipt in the Department.

b. Confidential reports are not generally released to the public, but may be released pursuant to a court order or as otherwise provided for under the Privacy Act.

3 FAM 4158 AUDIT; REMEDIAL ACTION; CERTIFICATION

3 FAM 4158.1 Auditing Reports

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The Financial Disclosure Division of the Office of the Assistant Legal Adviser for Ethics and Personnel, Office of the Legal Adviser (L/EP/FD), is responsible for auditing public and confidential financial disclosure reports to ensure conformity with the requirements of 5 CFR 2634.605. L/EP/FD examines each filer's holdings and affiliations to determine whether actual or apparent conflicts of interest, violations of the Standards of Conduct, or violations of other regulations are evident. L/EP/FD is responsible for obtaining all necessary information from files so that forms are complete and conflict determinations can be made accurately. Filers shall provide the requested information to L/EP/FD within 30 days or provide an interim response explaining the reasons for delay.

3 FAM 4158.2 Remedial Action

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

If, based on the audit of a financial disclosure report, a determination is made that action is necessary by the filer to correct or remedy a violation as defined in section 3 FAM 4158.1, L/EP/FD will notify the filer in writing of the requested remedial action and set a deadline for the filer to respond. Unless the ethics official determines that the filer has adequately documented the existence of unusual circumstances, remedial action must be completed within 90 days of such written notification.

3 FAM 4158.3 Failure to Comply with Requests for Remedial Action

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Failure of a public filer to comply with a request for remedial action will be reported to the Secretary of State and the Office of Government Ethics by the DAEO.

b. Failure of a confidential filer to comply with a request for remedial action will be reported to the Office of Employee Relations in the Bureau of Personnel (PER/ER) for appropriate disciplinary action under 3 FAM 4300 .

3 FAM 4158.4 Certification of Reports

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The DAEO is responsible for certification of nominee public reports for Presidential Appointees in the Department. The Alternate DAEO and Deputy DAEOs are responsible for certification of all other financial disclosure reports. Certification is defined as a determination that the report meets the requirements set forth in 5 CFR 2634.605(b)(1).

3 FAM 4158.5 Appeal

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

- a. An individual may appeal a decision that:
- The individual is a covered employee;
 - Information is required to be submitted;
 - Required information has not been submitted;
 - A conflict exists;
 - Remedial action is required; or
 - The employee has failed to comply with a request for remedial action.

b. An appeal must be submitted in writing to the DAEO (with a copy to L/EP/FD) within 30 days after the employee receives written notice of the decision to be appealed. The DAEO decides the appeal and notifies the employee in writing of the decision and the underlying rationale. This appeal process does not preclude any other appeal provided for by law or regulation.

3 FAM 4159 ETHICS TRAINING

(TL:PER-321; 12-7-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. In accordance with 5 CFR Section 2638.701, the Department maintains a program of ethics training to ensure that all employees are aware of Federal conflict of interest statutes and principles of ethical conduct. The DAEO conducts an annual ethics training program in compliance with 5 CFR Section 2638.704.

b. All covered employees are required to obtain annual ethics training either by verbal presentation or by viewing a recorded presentation. Employees are to comply with the annual ethics training requirement by December 31 of each year.

c. Post administrative officers and bureau executive directors will assist in the administration of the annual ethics training program by contacting employees to notify them of the specific dates on which training will be given and undertaking to ensure that all covered employees in the post or bureau attend the training. Posts and bureaus will promptly notify L/EP/FD of the names of persons trained and the dates of training.

3 FAM 4157 Exhibit 4157.4 TERMINATION CERTIFICATION STATEMENT



United States Department of State
Washington, D.C. 20520

Date: _____

Termination Certification Statement

Executive Personnel Financial Disclosure Report (SF-278)

Termination Filing

\$200 Late Filing Fee: I certify that I have received the SF-278, Executive Personnel Financial Disclosure Report, with instructions. I understand that the completed form must be filed with the Financial Disclosure Division (L/EP/FD), Office of the Legal Adviser, Department of State, Washington, DC 20520-6310, **within 30 days** of the effective date of termination from my SF-278 covered position. I further understand that I have an additional 30-day grace period to ensure that my report reaches L/EP/FD. If my Termination SF-278 is not received in L/EP/FD within 60 days of my termination date, absent an extension, I will incur a **\$200 late filing fee**.

(Full Name - Type or Print)

(Signature)

(Title and Grade)

Current Post: _____

Forwarding Address or Post: _____

Forwarding Telephone No : _____

Termination/Transfer Date:* _____

*Note: Foreign Service Officers serving in senior "stretch" assignments must file a Termination report within 30 days of departure from the senior position unless transferring directly to another senior position.

**Mail to: L/EP/FD, c/o Room 6310, N.S.
Phone: 202-647-6668**